

BILL LOCKYER
Attorney General of the State of California
THEODORA BERGER
Senior Assistant Attorney General
BRETT J. MORRIS
Deputy Attorney General
State Bar No. 158408
1515 Clay Street, 20th Floor
Oakland, CA 94612

EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103

Attorneys for the People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

**AUTOZONE, INC., a Nevada corporation;
AUTOZONE STORES, INC., a Nevada
corporation; AUTOZONE WEST, INC., a
Delaware corporation; AUTOZONE PARTS,
INC., a Nevada corporation; and DOES 1-50,**

Defendants.

No. _____

**COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES, RECOVERY OF
INVESTIGATIVE COSTS, AND
OTHER RELIEF**

1 [ADDITIONAL LIST OF PLAINTIFF'S COUNSEL BY ASSOCIATION]

2 DEAN FLIPPO

District Attorney of Monterey County

3 By: MATT BOGOSHIAN, State Bar No. 137311

4 Deputy District Attorney

1200 Aguajito Road, Room No. 301

5 Monterey, CA 93940

6 JAMES P. WILLETT

7 District Attorney of San Joaquin County

By: DAVID J. IREY, State Bar No. 142864

8 Supervising Deputy District Attorney

Environmental Prosecution Unit

9 P.O. Box 990

Stockton, CA 95201

11 MICHAEL A. RAMOS

12 District Attorney of San Bernardino County

By: GLENN YABUNO, State Bar No. 109471

13 Deputy District Attorney

316 N. Mountain View Ave.

14 San Bernardino, CA 92415

15
16 Plaintiff, the People of the State of California, by and through Bill Lockyer, Attorney
17 General of the State of California, Dean D. Flippo, District Attorney for the County of
18 Monterey, Michael A. Ramos, District Attorney for the County of San Bernardino, and
19 James P. Willett, District Attorney for the County of San Joaquin, alleges as follows:

20 **JURISDICTION AND VENUE**

21
22 1. Bill Lockyer, as Attorney General of the State of California, Dean D. Flippo, as
23 District Attorney for the County of Monterey, Michael A. Ramos, as District Attorney for the
24 County of San Bernardino, and James P. Willet, as District Attorney for the County of San
25 Joaquin, acting to protect the environment from spoliation, bring this action in the public
26 interest in the name of the People of the State of California.

27 2. This Court has jurisdiction pursuant to Article VI, Section 10 of the California
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1 Constitution and Health and Safety Code sections 25181 and 25182. Venue is proper in
2 this Court pursuant to Health and Safety Code section 25183 because the processing or
3 disposal of hazardous waste is made or is proposed to be made in San Bernardino
4 County.

5 3. Defendants AutoZone, Inc., AutoZone West, Inc., and AutoZone Parts, Inc., are
6 and have been located within the County of San Bernardino and, Plaintiff upon information
7 and belief, alleges that all of these Defendants transact business in the County of San
8 Bernardino and throughout the State of California. The violations of law hereinafter
9 described occurred within the County of San Bernardino, and elsewhere throughout the
10 State of California.

11 4. Plaintiff is unaware of the true names or capacities, whether individual,
12 association, partnership, corporation, or otherwise, of Defendants Does 1 through 20, or
13 any of them, and therefore sues said Defendants by such fictitious names and will seek
14 leave to amend this complaint to show their true names and capacities, when ascertained.

15 5. Each Defendant is and at all times relevant herein was a "person" as that term is
16 defined in Health and Safety Code section 25118.

17 **STATUTORY AND REGULATORY BACKGROUND**

18 6. The California Hazardous Waste Control Law, California Health and Safety Code
19 sections 25100 *et seq.* ("HWCL"), is a "cradle to grave" regulatory scheme that protects
20 public health and safety and the environment from threats posed by the improper handling,
21 storage, use and disposal of hazardous wastes. Regulations implementing the HWCL that
22 impose numerous and extensive requirements for the management of hazardous waste
23 are set forth in Title 22, California Code of Regulations, section 66001 *et seq.* ("hazardous
24 waste regulations").

25 7. Section 25189.2(b) of the Health and Safety Code makes any person who non-
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1 intentionally or non-negligently violates any provision of the HWCL, or any permit, rule,
2 regulation, standard, or requirement issued or promulgated pursuant to the HWCL liable
3 for a civil penalty not to exceed \$25,000 for each violation of a separate provision or, for
4 continuing violations, \$25,000 for each day that a violation continues.

5 8. Health and Safety Code section 25181 provides that the Attorney General or a
6 District Attorney may apply to the superior court for an order enjoining acts or practices
7 which constitute or will constitute a violation of the HWCL, or for any order directing
8 compliance, or a permanent or temporary injunction, restraining order, or other order that
9 may be granted.

10 9. Health and Safety Code section 25184 provides that in civil actions brought
11 pursuant to the HWCL in which an injunction or temporary restraining order is sought:
12 "it shall not be necessary to allege or prove at any stage of the proceeding that
13 irreparable damage will occur should the temporary restraining order, preliminary
14 injunction, or permanent injunction not be issued; or that the remedy at law is
15 inadequate, and the temporary restraining order, preliminary injunction, or
16 permanent injunction shall issue without such allegations and without such proof."

17 10. Chapter 6.95 of Division 20 of the California Health and Safety Code, codified at
18 sections 25500 *et seq.*, contains certain requirements for businesses relating to hazardous
19 materials, known as the Hazardous Materials Release and Response Plans and Inventory
20 statutes. This regulatory scheme protects public health and safety and the environment by
21 requiring handlers of hazardous materials to establish basic information on the location,
22 type, quantity and the health risk of materials stored or used in the state and to prepare
23 plans for response to any release of those materials so that firefighters or other responders
24 have such information available. In addition, business plans required to be prepared under
25 the Hazardous Materials Release and Response Plans and Inventory statutes must
26 include training for employees in safety procedures and for response to releases of
27 hazardous materials. Any business subject to these requirements must file updates
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1 whenever certain changes occur, and in any event annually. The penalty for failure to file,
2 update or modify a business plan or carry out the requirements of the statutes is \$2,000.00
3 for each day in which each violation occurs. If the business' failure to act was willful, and
4 with reasonable notice of the requirements, the penalty can be \$5,000.00 per day per
5 location.

6 11. Water Code section 13350 forbids any intentional or negligent discharge of waste
7 in violation of an order of the Regional Water Quality Control Board. Violators face
8 penalties of up to \$15,000.00 per day of discharge or \$20.00 for each gallon of waste
9 discharged. In addition, Water Code section 13385 forbids any violation of section 301 of
10 the Federal Water Pollution Control Act (33 U.S.C. § 1311). Persons violating Water Code
11 section 13385 are liable for civil penalties of \$25,000.00 for each day in which the violation
12 occurs.
13

14 12. The State of California prohibits the discharge or threatened discharge of any
15 industrial refuse and waste, whether liquid or solid, and substances deleterious to fish,
16 plant life, or bird life, unless that substance is expressly authorized pursuant to, and in
17 compliance with the terms and conditions of, a waste discharge requirement. (Fish & G.
18 Code § 5650(a). The State of California prohibits the deposit or placement of garbage and
19 rubbish where such waste can pass into waters of the state. (Fish & G. Code § 5652.)
20 Persons violating Fish and Game Code section 5650 are subject to civil penalties of up to
21 \$25,000.00 for each violation, as set forth in Fish and Game Code section 5650.1.
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23 **FACTUAL BACKGROUND**

24 13. Plaintiff realleges and incorporates by reference, as though set forth in full herein,
25 the allegations contained in paragraphs 1 through 12, inclusive, of this Complaint.

26 14. At all times relevant herein, Defendants own and/or operate, and continues to
27 own and/or operate, over 390 stores in California selling auto parts, motor oil and engine
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1 additives, and providing some repair services, including 36 stores in San Bernardino
2 County. Defendants handle used oil, used oil filters, and other hazardous waste, and
3 Defendants store and sell large amounts of hazardous materials. Several county
4 environmental health departments and Certified Unified Program Agencies ("CUPAs")
5 have discovered improper storage and disposal of waste oil and filters, a variety of
6 violations of laws governing hazardous materials management, failures to update and
7 complete business plans and training requirements, and the dumping of hazardous
8 materials into storm drains on Defendants' property.
9

10 15. On or about February 2004, the County of San Bernardino County Fire
11 Department/Hazardous Materials Division inspected an AutoZone retail facility located at
12 1050 Kendell Avenue, San Bernardino, California to determine compliance with the HWCL
13 and the hazardous waste and hazardous materials regulations, and to determine
14 compliance with the Hazardous Materials Release and Response Plans and Inventory
15 statutes. During the investigation, investigators for the County and/or Plaintiff observed
16 that the Defendants improperly stored and/or disposed of hazardous waste at the Site, and
17 off-site, and failed to update and adequately complete business plans. As a result of the
18 investigation, the County issued a Notice of Violation and Order to Comply citing the
19 Defendants for numerous violations of the statutes and the hazardous waste regulations,
20 including California Health and Safety Code Sections 25503.5 and 25154, and California
21 Code of Regulations Sections 66262.34(f)(3) and 66262.34(f)(2).
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23 16. On numerous other dates, which are unknown to Plaintiff at this time but when
24 discovered will be identified more clearly in an Amended Complaint, Plaintiff inspected
25 other AutoZone retail facilities located throughout California to determine compliance with
26 the HWCL and the hazardous waste and hazardous materials regulations, and to
27 determine compliance with the Hazardous Materials Release and Response Plans and
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1 Inventory statutes. During these inspections, investigators for the Plaintiff observed that
2 the Defendants improperly stored and/or disposed of hazardous waste at the Site, and off-
3 site, and failed to update and adequately complete business plans. During the inspection,
4 the Plaintiff observed additional and/or continuing violations of the statutes and hazardous
5 waste regulations occurring at the Defendants' facilities. Defendants' were issued Notices
6 of Violation for each of these substandard inspections.

7
8 17. To date, the Defendants have not corrected all of the violations of the statutes
9 and the hazardous waste regulations observed by Plaintiff at their facilities.

10 18. Plaintiff has determined that Defendants have engaged in, and unless enjoined
11 and restrained by this Court will continue to engage in, acts and practices which constitute
12 violations of the HWCL and the hazardous waste regulations.

13 19. Each violation renders Defendants liable for civil penalties pursuant to Health and
14 Safety Code section 25189(b), or alternatively, pursuant to Health and Safety Code section
15 25189.2(b) according to proof. Each continuing violation subjects Defendants to injunctive
16 relief pursuant to Health and Safety Code sections 25181 and 25184.

17 20. Plaintiff has incurred investigation costs to determine whether Defendants have
18 been in compliance with the HWCL and the hazardous waste regulations. Plaintiff has
19 expended and will continue to expend funds for such costs of investigation in order to
20 determine whether Defendants are in compliance with the HWCL and the hazardous waste
21 regulations. Defendants are therefore liable to Plaintiff for the costs of such investigation.

22 21. Whenever in this Complaint reference is made to any act of a named Defendant,
23 such allegation shall be deemed to mean that the employees of the named defendant did
24 or authorized such act, while engaged in the affairs of said defendant, and did so while
25 acting in the course and scope of their employment.
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1 **FIRST CAUSE OF ACTION**

2 (Violations of Health & Safety Code sections 25189 and 25189.2)

3 22. Plaintiff realleges and incorporates by reference, as though set forth in full herein,
4 the allegations contained in paragraphs 1 through 21, inclusive, of this Complaint.

5 23. Health and Safety Code section 25189.2(b) states that: "Any person who violates
6 any provision of [the HWCL and its regulations] is liable for a civil penalty not to exceed
7 twenty-five thousand dollars (\$25,000) for each separate violation or, for continuing
8 violations, for each day that the violation continues." Section 25189(b) contains an
9 identical provision for any intentional or negligent violation of the HWCL statutes,
10 regulations, permits, rules, requirements or standards.
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12 24. Plaintiff is informed and believes and, based upon such information and belief,
13 alleges that beginning at an exact date that is unknown to Plaintiff, but prior to June 3,
14 2005, and within five (5) years prior to the filing of this complaint, Defendants engaged in
15 acts in violation of the HWCL statutes, regulations, permits, rules, requirements or
16 standards issued or promulgated pursuant to the HWCL.
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18 **SECOND CAUSE OF ACTION**

19 (Violations of Health & Safety Code sections 25500 *et seq.*)

20 25. Plaintiff realleges and incorporates by reference, as though set forth in full
21 herein, the allegations contained in paragraphs 1 through 24, inclusive, of this Complaint.

22 26. Health and Safety Code section 25503.5 states that: "any business, that handles
23 a hazardous material that has a quantity at any one time during the reporting year equal to,
24 or greater than, a total volume of 55 gallons, shall establish and implement a business plan
25 for emergency response to a release or threatened release of hazardous materials in
26 accordance with the standards proscribed in the regulations adopted by Section 25503."
27 Section 25504 requires business plans to include an inventory of information about the
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1 hazardous materials, emergency response plans and procedures, and training for all new
2 employees and annual training, including refresher courses, for all employees in safety.

3 27. Plaintiff is informed and believes and, based upon such information and belief,
4 alleges that beginning at an exact date that is unknown to Plaintiff, but prior to June 3,
5 2005, and within five (5) years prior to the filing of this complaint, Defendants engaged in
6 acts in violation of the Hazardous Materials Release and Response Plans and Inventory
7 statutes and the regulations and rules promulgated pursuant to those statutes.
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10 **THIRD CAUSE OF ACTION**

11 **VIOLATION OF WATER POLLUTION STATUTES**

12 28. Plaintiff realleges and incorporates by reference, as though set forth in full
13 herein, the allegations contained in paragraphs 1 through 27, inclusive, of this Complaint.

14 29. Plaintiff is informed and believes and, based upon such information and belief,
15 alleges that beginning at an exact date that is unknown to Plaintiff, but prior to June 3,
16 2005, and within four (4) years prior to the filing of this complaint, Defendants engaged in
17 acts in violation of Water Code 13376 and the Fish and Game Code 5650 relating to
18 depositing, placing where it may pass into the waters of the state or discharging any
19 pollutant or deleterious substance.
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21 **FOURTH CAUSE OF ACTION**

22 **VIOLATIONS OF CIVIL CODE
SECTIONS 3479 AND 3480 (PUBLIC NUISANCE)**

23 30. Plaintiff realleges and incorporates by reference, as though set forth in full
24 herein, the allegations contained in paragraphs 1 through 29, inclusive, of this Complaint.

25 31. A "nuisance" is defined in section 3479 of the California Civil Code as "[a]nything
26 which is injurious to health, is indecent or offensive to the senses, or an obstruction to the
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1 free use of property, so as to interfere with the comfortable enjoyment of life or property."

2 32. A "public nuisance" is defined in section 3480 of the California Civil Code as a
3 nuisance "which affects at the same time an entire community or neighborhood, or any
4 considerable number of persons"

5 33. Pursuant to California Code of Civil Procedure section 3494, a public nuisance
6 may be abated by any public body or officer authorized thereto by law. Pursuant to Code
7 of Civil Procedure section 731, the Office of the District Attorney is authorized to abate
8 public nuisances related to matters within its jurisdiction.
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10 34. The maintenance of a business which allows the improper storage and disposal
11 of hazardous materials and wastes, and which fails to properly inventory hazardous
12 materials and plan for responses to any release of those materials, inevitably results in a
13 threat to the public health and safety and to the environment, and to the citizens of
14 California, and constitutes a continuing nuisance to the surrounding environs pursuant to
15 sections 3479 and 3480 of the California Civil Code.

16 35. Defendants will, unless restrained and enjoined by this Court, continue to
17 maintain the public nuisance and the acts complained of herein, which will continue to
18 pose a threat to public health and safety and to the environment.
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20 36. Unless and until Defendants are restrained by order of this Court, it will be
21 necessary for the District Attorney to commence successive actions against Defendants
22 after each discharge to secure remediation and to abate the threat to the public health and
23 safety and the environment that will be sustained, thus requiring a multiplicity of suits.

24 37. The People have no plain, speedy, or adequate remedy at law to address the
25 public nuisance. Injunctive relief is expressly authorized pursuant to California Civil Code
26 section 526. The People are entitled to an order requiring Defendants to undertake any
27 additional work necessary to abate the public nuisance. Such must be performed in
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1 conformance with each and every applicable law and under the supervision of all
2 appropriate regulatory authorities.

3 **FIFTH CAUSE OF ACTION**

4 (Violations of Business & Professions Code sections 17200 *et seq.*)

5 38. Plaintiff realleges and incorporates by reference, as though set forth in full
6 herein, the allegations contained in paragraphs 1 through 37, inclusive, of this Complaint.

7 39. Within and including the four (4) years prior to the filing of this Complaint,
8 Defendants committed the unlawful acts alleged in Causes of Action one through four
9 above in the County of San Bernardino, and elsewhere throughout the State of California..

10 40. On several occasions after receiving Notices of Violations from San Bernardino
11 Environmental Health Department inspectors, and other inspectors or investigators
12 throughout the State of California, reporting violations of the HWCL and the California
13 Code of Regulations, Defendants provided information to Plaintiff stating that the violations
14 had been addressed. Subsequent inspections revealed that not all of the violations had
15 been addressed, and that many of them were, and are, ongoing.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

18 1. That the Court issue a permanent injunction enjoining Defendants from further
19 violations of the HWCL and of the rules, regulations, permits, covenants, standards,
20 requirements and orders issued, promulgated and executed there under. Specifically,
21 Plaintiff requests that the Court issue an order:

22 (A) Ordering the Defendants to correct the violations of the HWCL and hazardous
23 waste regulations which exist at their facilities;

24 (B) Enjoining and restraining the Defendants from accepting, storing, and
25 disposing of hazardous waste at their facilities, unless and until Defendants have applied
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1 for and obtained a valid hazardous waste facility permit from the Plaintiff;

2 (C) Enjoining and restraining Defendants from depositing any additional waste,
3 whether such waste is hazardous or non-hazardous, on or into unauthorized hazardous
4 waste streams or sites;

5 (D) Ordering Defendants to containerize all hazardous waste at their facilities,
6 label hazardous waste containers, and keep the hazardous waste containers of hazardous
7 waste closed, unless adding or removing waste from the containers;

8 (E) Enjoining Defendants to remove all hazardous waste from their facilities, and
9 legally transport and dispose of such waste at an authorized hazardous waste disposal
10 facility; and

11 (F) Ordering Defendants to take all appropriate actions to operate their facilities
12 in a manner that minimizes the possibility of a fire, explosion or releases or threatened
13 releases of hazardous waste or hazardous waste constituents to air, soil, or surface water;

14 2. Grant or impose other terms as part of an injunction against Defendants as
15 appropriate;

16 3. Order that Defendants pay a civil penalty of up to \$25,000.00 for each violation of
17 the HWCL and the California Code of Regulations pleaded herein, in an amount according
18 to proof, but not less than \$4,000,000.00;

19 4. Order that Defendants pay a civil penalty of \$5,000.00 for each violation of the
20 Health and Safety Code Section 25503.5 pleaded herein, in an amount according to proof,
21 but not less than \$2,000,000.00;

22 5. Order that Defendants pay a civil penalty of \$2,500.00 for each violation of the
23 Business and Professions Code sections 17200 *et seq.* pleaded herein, in an amount
24 according to proof, but not less than \$2,000,000.00;

25 6. Order that Defendants pay a civil penalty of up to \$25,000.00 for each violation of
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1 Fish and Game Code Section 5650 pleaded herein, in an amount according to proof, but
2 not less than \$2,000,000.00;

3 7. Order that Defendants pay a civil penalty of up to \$25,000.00 for each day of
4 violation of Water Code Section 13376 pleaded herein, in an amount according to proof,
5 but not less than \$2,000,000.00;

6 8. Order that Defendant abate the nuisance;

7 9. Grant Plaintiff its costs of investigation;

8 10. Grant Plaintiff its costs of suit; and

9 11. Grant such other and further relief as the Court deems just and proper.
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11 Dated: June 22, 2005

Respectfully submitted,

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14 BILL LOCKYER
15 Attorney General of the State of California

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17 BRETT MORRIS
18 Deputy Attorney General

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20 DEAN FLIPPO
21 District Attorney of Monterey County

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23 JAMES P. WILLETT
24 District Attorney of San Joaquin County of

25 MICHAEL A. RAMOS
26 District Attorney of San Bernardino County
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